

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 93-414-S - ORDER NO. 93-866 ✓
SEPTEMBER 22, 1993

IN RE: DAH Associates and David A. Hutchens,)	
)	
Complainants,)	
)	
v.)	ORDER RULING
)	ON COMPLAINT
Midlands Utilities, Inc. and)	
Charles Parnell,)	
)	
Respondents.)	
)	
)	
)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Complaint of DAH Associates (DAH) and David A. Hutchens (Hutchens) (or the Complainants) against Midlands Utilities, Inc. (Midlands) and Charles Parnell (the Respondents) concerning sewer service to property owned by the Complainants in the Windy Hill Subdivision in Lexington County. The Commission decreed that a hearing should be held on this matter.

On August 18, 1993, a hearing was held before the Commission with the Honorable Rudolph Mitchell, Vice Chairman, presiding. The Complainants were represented by John F. Beach, Esquire; Jean Perrin Derrick, Esquire, represented the Respondents; and Florence P. Belser, Staff Counsel, represented the Commission Staff. The

Complainants presented the testimony of David Hutchens, Robin Foy, and Jim Lord. The Respondents presented the testimony of Keith Parnell. James H. Nichols appeared and testified as a public witness.

According to the testimony presented, this dispute concerns a tract of land in the Windy Hill Subdivision located in Lexington County. The Complainants contend that the property in question is included in the service area of Midlands and, should therefore, be afforded sewer service by Midlands. Midlands takes the position that the DAH/Hutchens tract of land is not in their service area.

Mr. Hutchens testified that in 1987 he began to explore the possibility of purchasing and developing an 8.4 acre parcel of land in the Windy Hill Subdivision. Mr. Hutchens testified that he consulted with Charles Parnell of Midlands and was assured that Midlands had the necessary plant capacity to serve the additional customers which Hutchens proposed. Mr. Hutchens testified that he understood that he was required to install the infrastructure in the development before Midlands would provide service. Mr. Hutchens stated that he purchased the property and began to develop the property. Mr. Hutchens noted that in 1993, he sought a Department of Health and Environmental Control (DHEC) permit to construct the sewer lines on the property, and needed a letter from Midlands showing that Midlands would service the lines and accept the new customers. Mr. Hutchens testified that Midlands refused to service the property, Midlands stating that the property was not in their service area, and further, that Midlands

demanded an up-front, lump sum payment of all interconnection (tap) fees before allowing him to connect to the system.

Keith Parnell of Midlands testified at the hearing and indicated that it is Midlands' belief and contention that the area in question is not in the service area of Midlands. Mr. Parnell stated that Midlands purchased the service rights to the Windy Hill Subdivision from Heater Utilities in 1978, and that the service area purchased was the 140 lots delineated on a plat dated May 20, 1976, entitled "As Built Sanitary Sewer System, Windy Hill Subdivision." (Hearing Exhibit #4, Exhibit 1.). Mr. Parnell said that the Midlands' service area in the Windy Hill Subdivision consisted only of the 140 lots drawn on the plat, which is part of Hearing Exhibit #4. Mr. Parnell further testified that Midlands required developers outside of the Midlands' service area to install the infrastructure, and then to pay tap fees in a lump sum payment before tapping onto the system. Mr. Parnell stated that Midlands did not allow developers to tap onto the system piecemeal, on a house-by-house basis.

Mr. Parnell testified extensively about Midlands' DHEC permit. Mr. Parnell testified that in his opinion Midlands would probably have to upgrade the existing plant, if a significant number of new houses were to tap onto the system. According to Mr. Parnell's testimony, the DHEC permit is based on the amount of flow other than the 400 gallons per day listed in the current DHEC guidelines. Mr. Parnell did admit that Midlands is serving more than the 140 lots delineated on the plat which is part of Hearing

Exhibit #4, and which Midlands maintains sets out their service area, and further, admitted that Midlands had not sought an extension of its service area before serving the additional lots. Mr. Parnell also admitted that the average flow at the plant is around 25,000 gallons, which is below the 42,000 flow allowed by the DHEC permit.

James H. Nichols, Executive Director for Habitat for Humanity, appeared as a public witness, and testified that Habitat for Humanity had purchased Lot 129. Mr. Nichols stated that when Habitat for Humanity purchased the lot, that they understood there were no problems with sewer hook-up, but that proved not to be the case. Mr. Nichols further stated that Habitat for Humanity has since received sewer service from Midlands for Lot 129.

DAH called two reply witnesses. The first reply witness was Robin Foy of DHEC. Mr. Foy testified that he reviewed the DHEC records regarding flow in the Windy Hill Subdivision, and that since January of 1992, the highest calculated daily flow from the Windy Hill Subdivision was 25,000 gallons per day in August 1992. Mr. Foy also testified that the NPDES permit for discharge for the plant at Windy Hill Subdivision is calculated at 42,000 gallons per day.

Jim Lord also testified as a reply witness. Mr. Lord owned the property in question before Mr. Hutchens purchased the property. Mr. Lord testified that in his opinion, the property in question was part of Midlands service area. Mr. Lord also testified that he sold several lots from this tract of land in

1984 and 1985. Mr. Lord also testified that each lot he sold was tapped onto Midlands system shortly after it was sold, that he installed the line from the Midlands main to the customer's premises, and that the tap fee was paid after each lot was tapped on.

After a review of the testimony and the applicable law, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Commission finds that it has jurisdiction over this matter, as Midlands is a public utility as defined by S.C. Code Ann. §58-5-10(3).

2. The Commission finds that the DAH/Hutchens tract is located within the Midlands service area.

Midlands has asserted that the DAH/Hutchens tract is not in its service area, yet Midlands treatment of the property does not support such a conclusion. Mr. Lord, owner of this property before Mr. Hutchens, testified that he sold several lots from this tract in 1984 and 1985 (specifically lots 142, 143, 144, and 145), and that Midlands provided sewerage treatment to those lots. Mr. Parnell testified that Midlands was providing sewerage service to lots other than the 140 shown on the plat but that he could not specify which lots. Mr. Parnell further testified that Midlands had not requested an extension of service area before providing service to those lots beyond the 140 lots on the plat. Furthermore, Mr. Parnell admitted that Midlands provided service

to two other lots that appear to the Commission to have been a part of this tract. These two lots are the lots which Midlands alleges that Mr. Hutchens tapped onto the Midlands system illegally, i.e., the Mina Harrington lot and the White lot. The Commission does not condone Hutchens unapproved tapping into Midlands system (and will address this later in this Order), but the Commission also cannot overlook Midlands actions in this matter. Midlands cannot say one thing and then act another way. Midlands has treated a portion of the property in question as if it was in its service area by extending service to the lots developed by Mr. Lord and to the Harrington and White lots. It appears that Midlands accepted that the Lord lots were in their service area in 1984 and 1985, and the Harrington and White lots were in their service area in 1990 or so, even though the lots were not specifically delineated on the plat which Midlands now says defined their service area in this subdivision.

In finding that the DAH tract is in the Midlands service area, the Commission also notes with particular interest the boundaries shown on Lot 129 of the Midlands plat. According to Mr. Parnell's testimony, Lot 129 is located in Midlands service area. On the plat in Mr. Parnell's exhibits (Hearing Exhibit #4), Lot 129 apparently includes the property which is in dispute. This conclusion is also supported by the testimony of Mr. Nichols, who stated that a back boundary line was surveyed for the lot when the lot was purchased by Habitat for Humanity.

Furthermore, Mr. Lord who owned the property prior to Mr.

Hutchens, testified that it was his belief that the property was in the Midlands service area. Mr. Lord testified that he had presented a plat prepared by him to Charles Parnell at Midlands and that Charles Parnell indicated that Midlands would serve the property.

Therefore, based on the foregoing and the testimony and the evidence presented at the hearing, the Commission concludes that the DAH property is located in the Midlands service area.

3. Mr. Hutchens agrees to install, at his expense, the infrastructure (mains and laterals) in the area which he is developing.

4. By his Complaint, Mr. Hutchens also requested that the Commission address the amount of interconnection (tap) fee charged by Midlands for this service area.

Mr. Hutchens testified that he objected to paying the full tap fee as approved for Midlands in this service area as he would be paying for the lines. Mr. Hutchens also testified that he objected to paying the plant expansion part of the tap fee, as in his opinion, the plant would not require expansion. Mr. Hutchens also testified that he would be making the connection into the Midlands system, and therefore, he objected to paying the full tap fee.

As noted above, Mr. Parnell testified extensively about the DHEC permit and the capacity of the Midlands system in Windy Hill. Mr. Parnell noted that the system is approved for 42,000 gallons. Mr. Parnell also testified that he was not concerned that the

plant would produce the effluent but had some concerns about the capacity of the drain field. Mr. Parnell also stated that he believed that DHEC might require that Midlands put in a backup drain field. However, Mr. Parnell admitted on cross-examination that Midlands had no right to up-front, lump sum tap fees from an area which is in the utility's service area.

CONCLUSIONS OF LAW

1. S.C. Code Ann. §58-5-10(3) defines "public utility" as "every corporation and person furnishing or supplying in any manner ... sewerage collection, sewerage disposal ... to the public, or any portion thereof, for compensation." Additionally, Midlands admits in its Answer that it is a public utility regulated by Commission.

2. 26 S.C. Regs. 103-504 provides that a public utility providing sewerage disposal shall obtain Commission approval in the form of a Certificate of Public Convenience and Necessity before extending its system. The testimony of Mr. Parnell clearly reveals that Midlands did not seek an extension of its service area from the Commission before extending service to an area which it now says is not in its service area. The actions of Midlands suggest that Midlands treated a portion of the property in dispute as though that property were in its service area. Additionally, the plat supplied by Midlands, which Midlands asserts defines its service area, shows the property in dispute to be a part of Lot 129, and Lot 129 is clearly part of Midlands service area. Therefore, the Commission concludes that the DAH/Hutchens tract,

is located in the Midlands service area.

3. DAH and Mr. Hutchens shall install at their expense the infrastructure (mains and laterals) needed on the DAH/Hutchens property. These mains and laterals shall be installed in accordance with the Commission's Rules and Regulations.

4. 26 S.C. Regs. 103-502.11 (Supp. 1992) provides that a tap fee is a "charge related to connecting the customer to the utility's system which includes the cost of installing the utility's service line from the main to the customer's premises and a portion of plant capacity which will be used to provide service to the new customer." The Commission has previously approved a tap fee for Midlands of \$500.00 which includes \$250.00 for the interconnection and \$250.00 plant expansion.

The Commission finds that since Mr. Hutchens will be putting in the mains and laterals and connecting the customer to the Midlands system, that Midlands should not recover the full amount of the interconnection component of the tap fee. However, while Midlands will not be making the actual physical interconnection, Midlands will have to have someone inspect the interconnection to insure that the interconnection is properly made. The Commission concludes that Midlands should be allowed to collect \$125.00 for inspecting the interconnection of the service line.

The Commission further concludes that Midlands should be allowed to collect the full \$250.00 for the plant capacity as the existing Midlands lines will be used to transport the sewerage to the treatment plant (Testimony of Parnell) and to help offset any

plant expansion should the plant or drain field need to be expanded in the future.

Therefore, the Commission concludes that Hutchens shall pay to Midlands a tap fee of \$375.00 (composed of \$125.00 interconnection fee and \$250.00 plant capacity fee) plus gross-up for each tap. The tap fee shall be paid as each tap is made and will not be required as an up-front lump sum payment.

The Commission is very concerned about the allegations of Mr. Hutchens tapping onto the Midlands system without permission. Therefore, Mr. Hutchens is hereby ordered by this Commission to make no taps onto the Midlands system without Midlands' approval. Additionally, pursuant to this Order and Reg. 103-555(E), Midlands "shall have the right to inspect the service connection to the service line at the time of the completion of connection and service may not be provided to such connection until the utility inspects the service line." Furthermore, DAH and Mr. Hutchens shall make all interconnections pursuant to and in accordance with the Commission's Rules and Regulations.

IT IS THEREFORE ORDERED THAT:

1. The DAH/Hutchins tract is a part of the Midlands service area of the Windy Hill Subdivision located in Lexington County, and Midlands shall provide sewer service to the development.
2. DAH and Mr. Hutchens are to install the infrastructure (mains and laterals) on the property at their expense.
3. DAH and Mr. Hutchens are to pay a tap fee of \$375.00 plus gross-up for each tap. DAH and Mr. Hutchens shall pay for each

tap at the time each lot is tapped onto the system; DAH and Hutchens are not required to pay an up-front, lump-sum tap fee.

4. DAH and Mr. Hutchens are not to tap onto the Midlands system without prior approval from Midlands. DAH and Hutchens shall notify Midlands prior to tapping onto the system and shall pay the tap fee at the time of giving notice.

5. All taps and interconnections shall be made in accordance with the Commission's Rules and Regulations and shall be subject to inspection by Midlands at the time of completion of the connection. DAH and Hutchens shall allow adequate notice to Midlands to allow Midlands to make the inspection.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Terry H. Brown
Vice-Chairman

ATTEST:


Charles W. Galletta
Executive Director

(SEAL)